

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MANUEL VICTOR GONZALES,

Petitioner,

No. 2:06-CV-10191  
HON. GERALD E. ROSEN

v.

LLOYD RAPELJE,

Respondent.

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**OPINION AND ORDER DENYING RECONSIDERATION OF THE COURT'S  
PREVIOUS DENIAL OF LEAVE TO APPEAL *IN FORMA PAUPERIS***

Manuel Victor Gonzales, ("Petitioner"), filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his convictions for second-degree murder, possession of a dangerous weapon with unlawful intent, possession of a firearm by a felon, and felony firearm. On April 6, 2015, this Court denied Petitioner's application for a writ of habeas corpus and also declined to issue a certificate of appealability or to grant leave to appeal *in forma pauperis*. [Dkt. # 57].

Petitioner has filed a notice of appeal. He also filed a motion for a certificate of appealability, which the Court denied on September 30, 2015. Presently pending before this Court is Petitioner's application to proceed without prepayment of fees and costs on appeal. Because this Court previously denied Petitioner leave to appeal *in forma pauperis* when it denied the petition for writ of habeas corpus, the Court will construe Petitioner's application to proceed without prepayment of fees and costs on appeal as a motion for reconsideration of the Court's prior order denying leave to appeal *in forma pauperis*. See

*Pettigrew v. Rapelje*, No. 08-12530-BC; 2008 WL 4186271, \* 1 (E.D. Mich. September 10, 2008).

Eastern District of Michigan Local Rule 7.1 (h) allows a party to file a motion for reconsideration. However, a motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *Id.*; See also *Flanagan v. Shamo*, 111 F. Supp. 2d 892, 894 (E.D. Mich. 2000). The movant must not only demonstrate a palpable defect by which the Court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof. A palpable defect is a defect that is obvious, clear, unmistakable, manifest, or plain. *Witzke v. Hiller*, 972 F. Supp. 426, 427 (E.D. Mich. 1997).

An appeal may not be taken *in forma pauperis* if the court determines that it is not taken in good faith. 28 U.S.C. §1915(a)(3); *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997). The Supreme Court has interpreted "good faith" as stated in § 1915 as simply "not frivolous". *Coppedge, supra*, 369 U.S. at 445-446. The Supreme Court has further defined a "frivolous" action as one that "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 1831 (1989).

In its Opinion and Order denying the petition for a writ of habeas corpus, denying a certificate of appealability and denying leave to appeal *in forma pauperis*, the Court determined that Petitioner had failed to state a habeas claim upon which relief should be granted and that his claims lacked legal and/or factual merit. It was because Petitioner's action lacked an arguable basis in law or fact that the Court also denied leave to proceed

on appeal *ifp*.

Petitioner's renewed *ifp* application merely presents issues which were already ruled upon by this Court, either expressly or by reasonable implication, when the Court denied Petitioner's habeas application and declined to issue a certificate of appealability or leave to appeal *in forma pauperis*. See *Hence v. Smith*, 49 F. Supp. 2d 547, 553 (E.D. Mich. 1999). Reconsideration of the Court's original ruling, therefore, will be denied.

**IT IS HEREBY ORDERED** that Petitioner's motion for a reconsideration of the denial of leave to proceed *in forma pauperis* [Dkt. # 66] is **DENIED**. This denial is without prejudice to Petitioner's right to apply to the United States Court of Appeals for the Sixth Circuit for leave to proceed *ifp*.

s/Gerald E. Rosen  
Chief Judge, United States District Court

Dated: November 23, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on November 23, 2015, by electronic and/or ordinary mail.

s/Julie Owens  
Case Manager, (313) 234-5135